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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,667	01/14/2004	Steven J. Boege	5178	5889
22896	7590	06/07/2006	EXAMINER	
MILA KASAN, PATENT DEPT. APPLIED BIOSYSTEMS 850 LINCOLN CENTRE DRIVE FOSTER CITY, CA 94404			PUNNOOSE, ROY M	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14 and 19-22 are drawn to a device and/or method for determining concentration of spectrally distinguishable species in a biological sample, classified in class 356, subclass 417.
- II. Claims 15-18 are drawn to an optical filter device comprising two filter elements and a beamsplitting element, classified in class 356, subclass 418.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination of Group II (claims 15-18) has separate utility such as a filter device for filtering out a desired wavelength-band for an incident light on an object while passing only selected wavelength-band of reflected light from said object to measure color of the object in a desired wavelength range. See MPEP § 806.05(d).

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. This application contains claims directed to the following patentably distinct species:

- a. Figure 2B is directed to an apparatus/method with an imaging system in which light passing through is non-collimated.
- b. Figure 2C is directed to an apparatus/method with an imaging system in which light passing through is collimated.
- c. Figure 3A is directed to an apparatus/method with an imaging system, wherein the imaging system is a microscopy imaging system.
- d. Figure 3 is directed to an apparatus/method with an imaging system, wherein the imaging system is a fluorometric imaging system.

The species are independent or distinct because each of the above embodiments has a unique type imaging system.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. **Currently, claim 22 is generic.**

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Oath/Declaration

7. It was not executed in accordance with either 37 CFR 1.66 or 1.68.

The signatures of the inventors are missing in the oath. Appropriate correction is required.


Contact/Status Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**. The examiner can normally be reached on 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 22, 2006


Roy M. Punnoose
Patent Examiner
Art Unit 2877